

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY NORRIS OUELLETTE,

Defendant-Appellant.

UNPUBLISHED

October 26, 2001

No. 223853

Cheboygan Circuit Court

LC No. 99-002074-FH

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

MEMORANDUM.

Defendant was convicted by a jury of operating a motor vehicle while under the influence of intoxicating liquor, third offense, MCL 257.625(1), and driving on a suspended license, second offense, MCL 257.904(1)(a). He appeals as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the trial court abused its discretion in permitting the prosecution to add Sgt. Larry Miller to its witness list shortly before trial. Pursuant to MCL 767.40a(3), the prosecutor is required to send to the defendant, not less than thirty days before trial, a list of the witnesses the prosecutor intends to produce at trial. However, MCL 767.40a(4) allows a prosecutor to add or delete from the witness list at any time upon leave of the court and for good cause shown. A trial court's decision to allow a late endorsement of a witness is reviewed for an abuse of discretion. *People v Burwick*, 450 Mich 281, 292; 537 NW2d 813 (1995). No error requiring reversal will be found absent a showing that defendant was prejudiced. *People v Williams*, 188 Mich App 54, 58-59; 469 NW2d 4 (1991).

We need not reach the issue whether good cause was established for late endorsement of the witness in this case. Even if we were to conclude that the trial court abused its discretion in finding good cause to allow Sgt. Miller to testify, reversal is not required because defendant has not demonstrated the requisite prejudice. *People v Hana*, 447 Mich 325, 358 n 10; 524 NW2d 682 (1994); *Williams*, *supra*.

Defendant claims prejudice from Sgt. Miller's surprise testimony that defendant stated that he had been riding alone. While it is true that Sgt. Miller did not tell the investigating officers about defendant's alleged statement and it was not included in the police report provided to the defense, defendant was not deprived of a fair trial. First, defense counsel had the opportunity to cross-examine Sgt. Miller regarding defendant's alleged statement and Sgt.

Miller's failure to inform the troopers of the statement. See *People v Umerska*, 94 Mich App 799, 804; 289 NW2d 858 (1980). Second, there is no evidence of bad faith on the part of the prosecution or Sgt. Miller regarding his testimony. Finally, although the prosecution did not have direct evidence, other than Sgt. Miller's testimony, of defendant's operation of the motorcycle, there was sufficient circumstantial evidence to allow a reasonable trier of fact to infer such operation. Thus, if there was error, it was harmless.

Affirmed.

/s/ William C. Whitbeck

/s/ Janet T. Neff

/s/ Joel P. Hoekstra